

shall identify the vessel, cargo and tonnage, and round-trip voyage itinerary including dates of arrival and departure at port or ports of loading and discharge. The semiannual periods and the information to be submitted are as follows:

Period	Due date
April 1–September 30	January 1.
October 1–March 31	July 1.

(1) *Port expenses.* Total expenses or fees, by port, for pilots, tugs, line handlers, wharfage, port charges, fresh water, lighthouse dues, quarantine service, customs charges, shifting expenses, and any other appropriate port expense.

(2) *Cargo expense.* Separately list expenses or fees for stevedores, elevators, equipment, and any other appropriate expenses.

(3) *Extra cargo expenses.* Separately list expenses or fees for vacuators and/or cranes, lightering (indicate tons moved and cost per ton), grain-to-grain cleaning of holds or tanks, and any other appropriate expenses.

(4) *Canal expenses.* Total expenses or fees for agents, tolls (light or loaded), tugs, pilots, lock tenders and boats, and any other appropriate expenses. Indicate waiting time and time of passage.

(d) *Other requirements.* Unless otherwise provided, operators shall use generally accepted accounting principles and MARAD's regulations at 46 CFR part 232, Uniform Financial Reporting Requirements, for guidance in submitting cost data. Notwithstanding the general provisions in 46 CFR 232.2(c) for MARAD program participants, each operator shall submit cost data in the format that conforms with the accounting practices reflected in the operator's trial balance and, if audited statements are prepared, the audited financial statements. Data requirements stipulated in paragraph (b) of this section that are not included under those reporting instructions shall be submitted in a similar format. If the operator has already submitted to MARAD, for other purposes, any data required under paragraph (b) of this section, its submission need not be

duplicated to satisfy the requirements of this part.

(e) *Presumption of confidentiality.* MARAD will initially presume that the material submitted in accordance with the requirements of this part is privileged or confidential within the meaning of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4). In the event of a subsequent request for any portion of that data under the FOIA, MARAD will inform the submitter of such request and allow the submitter the opportunity to comment. The submitter shall claim or reiterate its claim of confidentiality at that time by memorandum or letter, stating the basis for such assertions of exemption from disclosure. The Freedom of Information Act Officer, or the Chief Counsel of MARAD, will inform the submitter of the intention to disclose any information claimed to be confidential, after the initial FOIA request, or after any appeal of MARAD's initial decision, respectively.

(Approved by the Office of Management and Budget under control number 2133-0514)

§ 382.3 Determination of fair and reasonable rate.

Fair and reasonable rates for the carriage of preference cargoes on U.S.-flag commercial vessels shall be determined as follows:

(a) *Operating cost component—(1) General.* An operating cost component for each category, based on average operating costs of participating vessels within a vessel size category, shall be determined, at least twice yearly, on the basis of operating cost data for the calendar year immediately preceding the current year that has been submitted in accordance with § 382.2. The operating cost component shall include all operating cost categories, as specified in 46 CFR 232.5, Form MA-172, Schedule 310, Operating Expenses. For purposes of these regulations, charter hire expenses are not considered operating costs. MARAD shall index such data yearly to the current period, utilizing the escalation factors for wage and non-wage costs used in escalating operating subsidy costs for the same period.

(2) *Fuel.* Fuel costs within each category shall be determined based on the

average actual fuel consumptions, at sea and in port, and current fuel prices in effect at the time of the preference cargo voyage(s).

(3) *Vessel categories.* Vessels shall be placed in categories by deadweight capacities (DWT), as follows:

- Group I—under 10,000 DWT
- Group II—10,000—19,999 DWT
- Group III—20,000—34,999 DWT
- Group IV—35,000 DWT and over.

(b) *Capital Component*—(1) *General.* An average capital cost component for each category shall be constructed, at least twice yearly, consisting of vessel depreciation, interest, and return on equity.

(2) *Items included.* The capital cost component shall include:

(i) *Depreciation.* The owners' capitalized vessel costs, including capitalized improvements, shall be depreciated on a straight-line basis over a 20-year economic life, except vessels purchased or reconstructed when their age was greater than 10 years old. To the extent vessels are chartered or leased, the operator shall submit the capitalized cost of the vessel owner and imputed interest rate. If these items are not furnished, MARAD will construct these amounts. When vessels more than 10 years old are acquired, a depreciation period of 10 years shall be used. Capitalized improvements made to vessels more than 10 years old shall be depreciated over a 10-year period. When vessels more than 10 years old are reconstructed, MARAD will determine the depreciation period.

(ii) *Interest.* The cost of debt shall be determined by applying each vessel owner's actual interest rates to the outstanding vessel indebtedness. MARAD shall assume that original vessel indebtedness is 75 percent of the owners' capitalized vessel costs, including capitalized improvements, and that annual principal payments are made in equal installments over the economic life of the vessels as determined in accordance with paragraph (b)(2)(i) of this section. Where an operator uses a variable interest rate, the operator's actual interest rate at the time of calculation of the average capital cost component shall be used. The ten-year Treasury bill (T-bill) rate plus one percent on the first business day of the

year or the first business day on or after July 1 shall be used for operators without vessel debt and when the actual rate is unavailable.

(iii) *Return on equity.* The rate of return on equity shall be computed in the same manner as described in paragraph (b)(3) of this section. For the purpose of determining equity, it shall be assumed that the vessel's constructed net book value, less outstanding constructed principal, is equity. The constructed net book values shall equal the owners' capitalized cost minus accumulated straight-line depreciation.

(3) *Return on working capital.* For each voyage a return on working capital shall be included as a voyage related capital cost element, and thus not part of the averaged costs. Working capital shall equal the dollar amount necessary to cover 100 percent of the averaged operating costs and estimated voyage costs for the voyage. The rate of return shall be based on an average of the most recent return of stockholders' equity for a cross section of transportation companies, including maritime companies.

(4) *New vessel allowance.* Newly constructed vessels and vessels acquired during or before their fifth year of age will receive an additional allowance for acquisition capital as part of the capital cost element. For the first year following construction or acquisition by the operator, a daily amount equal to ten percent of capitalized acquisition costs, divided by 300 operating days, shall be included. This amount shall be reduced by one percent of capitalized acquisition costs each subsequent year. No allowance shall be included after the tenth year following construction.

(5) *Voyage component.* The annual average depreciation, interest, and return on equity for vessels in each category shall be divided by 300 vessel operating days to yield the daily cost factors. Total voyage days shall be applied to the daily cost factors and totaled with the return on working capital and new vessel allowance for the voyage to determine the daily capital cost component.

(c) *Port and cargo handling cost component.* MARAD shall calculate an estimate of all port and cargo handling costs on the basis of the reported cargo tender terms. The port and cargo handling cost component shall be based on vessels in the category and the most current information available verified by information submitted in accordance with §382.2(c), or as otherwise determined by MARAD, such as by analysis of independent data obtained from chartering agencies.

(d) *Brokerage and overhead component.* An allowance for broker's commission and overhead expenses of 8.5 percent shall be added to the sum of the operating cost component, the capital cost component, and the port and cargo handling cost component.

(e) *Determination of voyage days.* The following assumptions shall be made in determining the number of preference cargo voyage days:

(1) The voyage shall be round-trip with the return in ballast to a port or port range selected by MARAD as the most appropriate, unless the vessel is scrapped or sold after discharge of the preference cargo and does not return to the United States as a U.S.-flag vessel. In this event, only voyage days from the load port to the discharge port, including time allowed to discharge, shall be included.

(2) Cargo is loaded and discharged as per cargo tender terms interpreted in accordance with the "International Rules For the Interpretation of Trade Terms" (INCOTERMS) published by the International Chamber of Commerce.

(3) Total loading and discharge time includes the addition of a factor to account for delays and days not worked.

(4) One extra port day is included at each anticipated bunkering port.

(5) An allowance shall be included for canal transits, when appropriate.

(6) Transit time shall be based on the average speed of vessels in the category. When calculating the vessels' average speed, individual vessel speeds will be reduced by five percent for self-propelled vessels and ten percent for tugs/barges to account for weather conditions.

(f) *Determination of cargo carried.* The amount of cargo tonnage used to cal-

culate the rate shall be based on the tender offer or charter party terms. In instances when separate parcels of preference cargo are booked or considered for booking on the same vessel, whether under a single program or different programs, a guideline rate shall be provided based on the combined voyage.

(g) *Total rate.* The guideline rate shall be the total of the operating cost component, the capital cost component, the port and cargo handling cost component, and the broker's commission and overhead component. The fair and reasonable rate can be expressed as total voyage revenue or be divided by the amount of cargo to be carried, as prescribed in paragraph (f) of this section, and expressed as cost per ton, whichever MARAD deems most appropriate.

§382.4 Waivers.

In special circumstances and for good cause shown, the procedures prescribed in this part may be waived in keeping with the circumstances of the present, so long as the procedures adopted are consistent with the Act and with the intent of this part.

PART 383 [RESERVED]

PART 385—RESEARCH AND DEVELOPMENT GRANT AND COOPERATIVE AGREEMENTS REGULATIONS

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